Billing Code 4333-15

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS–HQ–MB–2015–0073; FF09M21200-178-FXMB1231099BPP0]

RIN 1018–BB06

Migratory Bird Hunting; Approval of Corrosion-Inhibited Copper Shot as Nontoxic for Waterfowl Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of draft environmental assessment.

SUMMARY: Having completed our review of the application materials for corrosion-inhibited copper shot, the U.S. Fish and Wildlife Service (hereinafter Service or we) proposes to approve the shot for hunting waterfowl and coots. We have concluded that this type of shot left in terrestrial or aquatic environments is unlikely to adversely affect fish, wildlife, or their habitats. Approving this shot formulation would increase the nontoxic shot options for hunters.

DATES: Electronic comments on this proposal or on the draft environmental assessment via *http://www.regulations.gov* must be submitted by 11:59 p.m. Eastern time on [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**]. Comments submitted by mail must be postmarked no later than [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

ADDRESSES: *Document Availability*. You may view the application and our draft environmental assessment by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Search for Docket No. FWS–HQ–MB–2015–0073.
- Request a copy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written Comments: You may submit comments on the proposed rule or the associated draft environmental assessment by either one of the following two methods:

- Federal eRulemaking portal: *http://www.regulations.gov*. Follow the instructions for submitting comments to Docket No. FWS–HQ–MB–2015–0073.
- U.S. mail or hand delivery: Public Comments Processing, Attention: FWS–HQ–MB–2015–0073; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: BPHC, Falls Church, VA 22041–3803.

We will not accept email or faxes. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information that you provide.

FOR FURTHER INFORMATION CONTACT: Ron Kokel, Division of Migratory Bird Management, at 703–358–1967.

SUPPLEMENTARY INFORMATION:

Background

The Migratory Bird Treaty Act of 1918 (Act) (16 U.S.C. 703–712 and 16 U.S.C. 742 a–j) implements migratory bird treaties between the United States and Great Britain for Canada (1916 and 1996, as amended), Mexico (1936 and 1972, as amended), Japan (1972 and 1974, as amended), and Russia (then the Soviet Union, 1978). These treaties protect most migratory bird species from take, except as permitted under the Act, which authorizes the Secretary of the Interior to regulate take of migratory birds in the United States. Under this authority, we control the hunting of migratory game birds through regulations at 50 CFR part 20. We prohibit the use of shot types other than those listed in the Code of Federal Regulations (CFR) at 50 CFR 20.21(j) for hunting waterfowl and coots and any species that make up aggregate bag limits.

Deposition of toxic shot and release of toxic shot components in waterfowl hunting locations are potentially harmful to many organisms. Research has shown that ingested spent lead shot causes significant mortality in migratory birds. Since the mid-1970s, we have sought to identify types of shot for waterfowl hunting that are not toxic to migratory birds or other wildlife when ingested. We have approved nontoxic shot types and coatings and added them to the migratory bird hunting regulations at 50 CFR 20.21(j). We continue to review shot types and coatings submitted for approval as nontoxic following a process set forth at 50

CFR 20.134.

We addressed lead poisoning in waterfowl in an environmental impact statement (EIS) in 1976, and again in a 1986 supplemental EIS. The 1986 document provided the scientific justification for a ban on the use of lead shot and the subsequent approval of steel shot for hunting waterfowl and coots that began that year, with a complete ban of lead for waterfowl and coot hunting in 1991. We have continued to consider other potential nontoxic shot candidates for approval. We are obligated to review applications for approval of alternative shot types as nontoxic for hunting waterfowl and coots.

Many hunters believe that some nontoxic shot types compare poorly to lead and may damage some shotgun barrels. A small and decreasing percentage of hunters have not complied with nontoxic shot regulations. Allowing use of additional nontoxic shot types may encourage greater hunter compliance and participation with nontoxic shot requirements and discourage the use of lead shot. The use of nontoxic shot for waterfowl hunting increased after the ban on lead shot (Anderson *et al.* 2000), but we believe that compliance would continue to increase with the availability and approval of other nontoxic shot types. Increased use of nontoxic shot will enhance protection of migratory waterfowl and their habitats. More important is that the Service is obligated to consider all complete nontoxic shot applications submitted to us for approval.

Application

Environ-Metal, Inc., of Sweet Home, Oregon, seeks approval of corrosion-inhibited copper shot as nontoxic. We evaluated the impact of approval of this shot type in a draft environmental assessment (see **ADDRESSES**, above, for information on viewing a copy of

the draft environmental assessment). The data from Environ-Metal, Inc., indicate that the shot's coating will essentially eliminate copper exposure in the environment and to waterfowl if the shot is ingested. We believe that this type of shot will not pose a danger to migratory birds, other wildlife, or their habitats.

We have reviewed the shot under the criteria in Tier 1 of the nontoxic shot approval procedures at 50 CFR 20.134 for permanent approval of shot and coatings as nontoxic for hunting waterfowl and coots. We propose to amend 50 CFR 20.21(j) to add the shot to the list of those approved for waterfowl and coot hunting. Details on the evaluations of the shot can be found in the draft environmental assessment.

Corrosion-Inhibited Copper Shot

Corrosion-inhibited copper shot (CIC shot) consists of commercially pure copper that has been surface-treated with benzotriazole (BTA) to obtain insoluble, hydrophobic films of BTA-copper complexes (CDA 2009). These films are very stable; are highly protective against copper corrosion in both salt water and fresh water; and are used extensively to protect copper, even in potable water systems. Other high-volume applications include deicers for aircraft and dishwasher detergent additives, effluents of which may be directly introduced into municipal sewer systems, indicative of the exceptionally low environmental impact of BTA. "The corrosion-inhibiting effectiveness of BTA-copper complex coating, based on actual testing conducted by the applicants and by others, is substantial."

Shot Coating and Test Device

CIC shot will have an additional coating that will fluoresce under ultraviolet light.

The coating is applied by a proprietary process, and coats the shot so that the layers of coating are visible through the translucent shotshell. The coating is environmentally safe and is very long-lasting in the shotshells. The sole purpose of fluorescent-coating CIC shot is to provide a portable, non-invasive and affordable field detection method for use by law enforcement officers to identify this non-magnetic shot type as approved for waterfowl and coot hunting.

ECO Pigments^{TM}, manufactured exclusively by DayGlo, Inc. (Cleveland, OH), are thermoplastic fluorescent powders free of formaldehyde, heavy metals, azo compounds, perfluorooctanoic acid, aromatic amines, regulated phthalates, bisphenol A (BPA), polyaromatic hydrocarbons, substance of very high concern (SVHC) chemicals, and California Proposition 65 chemicals. The pigments were originally developed for use as brightly colored "markers" to be mixed with aerially applied, fire-retardant chemicals used in forest fire suppression, because they are more "environmentally friendly" than even the relatively inert iron-oxide powders formerly applied. They are globally approved for a wide variety of uses, including textile dyes, paints, and toys. Environ-Metal, Inc., anticipates applying coatings approximately 0.001-inch thick, a value which is calculated to add about 0.13 percent by weight to the mass of a #4-size copper shot.

Environ-Metal, Inc., will apply the pigment to metallic shot using a proprietary process to create a thin, adherent coating of a tough, resilient, fluorescent substance. The coating is visually detectable through the wall of a shotshell when ultraviolet light is applied to the exterior of the shell. To further aid field detection, after application of the nontoxic ultraviolet (UV) pigment to CIC shot, the shot is loaded into an uncolored ("clear") hull, with a unique inner shot wad printed with the manufacturer and shot material type.

Law enforcement officers who have reason to suspect that a non-magnetic shotshell may contain unapproved shot (*e.g.*, toxic lead) need only shine the UV light on the side of the translucent shell, which will be marked by Environ-Metal, Inc., as containing copper, to determine the presence or absence of a visible glow emitted by the shot coating.

Although the shot coating is inherently water-proof, it is further protected against environmental degradation by being sealed within two layers of polyethylene plastic—the wad and the hull or shell. Environ-Metal, Inc., has stated that "potential fading of the thermoplastic UV dye could not become significant until after both of the enveloping polyethylene cylinders had become embrittled/cracked by excessive exposure to direct sunlight, a condition which would essentially render the shotshell useless."

Positive Effects for Migratory Waterfowl Populations

Allowing use of additional nontoxic shot types may encourage greater hunter compliance and participation with nontoxic shot requirements and discourage the use of lead shot. Furnishing additional approved nontoxic shot types and nontoxic coatings likely would further reduce the use of lead shot. Thus, approving additional nontoxic shot types and coatings would likely result in a minor positive long-term impact on waterfowl and wetland habitats.

Unlikely Effects on Endangered and Threatened Species

The impact on endangered and threatened species of approving corrosion-inhibited copper shot would be very small, but positive. Corrosion-inhibited copper shot is highly unlikely to adversely affect animals that consume the shot or habitats in which it might be

used. We see no potential significant negative effects on endangered or threatened species due to approval of the shot type.

Further, we annually obtain a biological opinion pursuant to section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), prior to establishing the annual migratory bird hunting regulations. The migratory bird hunting regulations promulgated as a result of this annual consultation remove and alleviate chances of conflict between migratory bird hunting and endangered and threatened species.

Beneficial Effects on Ecosystems

Previously approved shot types have been shown in test results to be nontoxic to the migratory bird resource, and we believe that they cause no adverse impact on ecosystems. There is concern, however, about noncompliance with the prohibition on lead shot and potential ecosystem effects. The use of lead shot has a negative impact on wetland ecosystems due to the erosion of shot, causing sediment/soil and water contamination and the direct ingestion of shot by aquatic and predatory animals. Though we believe noncompliance is of concern, approval of the shot type would have little impact on the resource, except the small positive impact of reducing the rate of noncompliance.

Cumulative Impacts

We foresee no negative cumulative impacts if we approve this shot type for waterfowl hunting. Its approval could help to further reduce the negative impacts of the use of lead shot for hunting waterfowl and coots. We believe the impacts of the approval for waterfowl hunting in the United States should be positive.

Public Comments

You may submit information concerning this proposed rule or the draft environmental assessment by one of the methods listed in **ADDRESSES**. If you submit information via *http://www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*.

Information and supporting documentation that we receive in response to this proposed rule will be available for you to review at *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 5275 Leesburg Pike, Falls Church, VA.

Required Determinations

Executive Order 13771—Reducing Regulation and Controlling Regulatory Costs

This proposed rule is considered to be an Executive Order (E.O.) 13771 deregulatory action (82 FR 9339, February 3, 2017) because it would approve an additional type of nontoxic shot in our regulations at 50 CFR part 20.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that OIRA will review all significant rules. OIRA

has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104-121)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions).

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We have examined this proposed rule's potential effects on small entities as required by the Regulatory Flexibility Act, and have determined that this action would not have a significant economic impact on a

substantial number of small entities. The rule would allow small entities to improve their economic viability. However, the rule would not have a significant economic impact because it would affect only two companies. We certify that because this rule would not have a significant economic effect on a substantial number of small entities, a regulatory flexibility analysis is not required.

This rule is not a major rule under the SBREFA (5 U.S.C. 804 (2)).

a. This rule would not have an annual effect on the economy of $100 million or more.

b. This rule would not cause a major increase in costs or prices for consumers; individual industries; Federal, State, Tribal, or local government agencies; or geographic regions.

c. This rule would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we have determined the following:

a. This rule would not "significantly or uniquely" affect small governments. A small government agency plan is not required. Actions under the proposed rule would not affect small government activities in any significant way.

b. This rule would not produce a Federal mandate of $100 million or greater in any year. It would not be a "significant regulatory action" under the Unfunded Mandates Reform Act.

Takings

In accordance with E.O. 12630, this proposed rule would not have significant takings implications. A takings implication assessment is not required. This proposed rule does not contain a provision for taking of private property.

Federalism

This proposed rule does not have sufficient Federalism effects to warrant preparation of a federalism summary impact assessment under E.O. 13132. It would not interfere with the ability of States to manage themselves or their funds.

Civil Justice Reform

In accordance with E.O. 12988, the Office of the Solicitor has determined that this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of E.O. 12988.

Paperwork Reduction Act of 1995 (PRA)

This proposed rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the PRA (44 U.S.C. 3501 et seq.). OMB has approved our collection of information associated with applications for approval of nontoxic shot (50 CFR 20.134) and assigned OMB Control Number 1018–0067, which expires March 31, 2020. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control

number.

National Environmental Policy Act

Our draft environmental assessment is part of the administrative record for this proposed rule. In accordance with the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 *et seq.*) and part 516 of the U.S. Department of the Interior Manual (516 DM), approval of corrosion-inhibited copper shot and fluoropolymer coatings would not have a significant effect on the quality of the human environment, nor would it involve unresolved conflicts concerning alternative uses of available resources. Therefore, preparation of an environmental impact statement is not required.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), E.O. 13175, and 512 DM 2, we have evaluated potential effects on federally recognized Indian Tribes and have determined that there are no potential effects. This rule would not interfere with the ability of Tribes to manage themselves or their funds or to regulate migratory bird activities on Tribal lands.

*Energy Supply, Distribution, or Use (*E.O. *13211)*

E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule would not be a significant regulatory action under E.O. 12866, nor would it significantly affect energy supplies, distribution, or use. This

action would not be a significant energy action, and no Statement of Energy Effects is required.

Compliance with Endangered Species Act Requirements

Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that "The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (16 U.S.C. 1536(a)(1)). It further states that the Secretary must "insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat" (16 U.S.C. 1536(a)(2)). We have concluded that this proposed rule would not affect listed species.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, please send us comments by one

of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

For the reasons discussed in the preamble, we propose to amend part 20, subchapter B, chapter I of title 50 of the Code of Federal Regulations as follows:

PART 20—MIGRATORY BIRD HUNTING

1. The authority citation for part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act, 40 Stat. 755, 16 U.S.C. 703–712; Fish and Wildlife Act of 1956, 16 U.S.C. 742a–j; Public Law 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

2. Amend § 20.21 paragraph (j)(1) by:

a. Adding a table entry for "Corrosion-inhibited copper", immediately following the entry for "Copper-clad iron"; and

b: Revising the first table note.

The addition and revision read as follows:

§ 20.21 What hunting methods are illegal?

* * * * *

(j)(1) * * *

Approved shot type*	**Percent composition by weight**	**Field testing device****
* * * * * * *		
Corrosion-inhibited copper	≥99.9 copper with benzotriazole and thermoplastic fluorescent powder coatings	Ultraviolet Light
* * * * * * *		

* Coatings of copper, nickel, tin, zinc, zinc chloride, zinc chrome, fluoropolymers, and fluorescent thermoplastic on approved nontoxic shot types also are approved.

* * * * *

Dated: __August 8, 2017_____.

_____Todd D. Willens_____

Acting Assistant Secretary for Fish and Wildlife and Parks.

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